

#### **AMENDMENTS TO THE DRAWINGS**

No Amendments to the drawings are made herein.

#### **AMENDMENTS TO THE SPECIFICATION**

No Amendments to the specification are made herein.

#### **AMENDMENTS TO THE CLAIMS**

No Amendments to the claims are made herein.

## **REMARKS**

In view of the following remarks, Applicant respectfully requests reconsideration and allowance of the subject application.

### **Rejections Under 35 U.S.C. §103**

Claims 1-7 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 6,425,008 to Lecheler et al., ("Lecheler") in view of U.S. Patent No. 6,978,265 to Schumacher ("Schumacher").

Applicant traverses the rejections of claims 14-18. Initially, Applicant contends that the Action fails to establish a *prima facie* case of obviousness because the Action fails to make the necessary factual findings required under *Teleflex Inc. v. KSR Int'l, Co.* 550 U.S. \_\_\_, 82 USPQ 2d 1385 (2007), as interpreted by the Examination Guidelines for Determining Obviousness Under 35 U.S.C. §103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*, published October 10, 2007. For example, the Action lacks any factual findings with regard to on the level of ordinary skill in the art.

Further, the Action includes substantive errors with respect to the status of the prior art. In particular, the outstanding rejections under 35 U.S.C. §103 are improper as a matter of law because there is no evidence of record to support the assertion that Schumacher is available as prior art against this application. The present application has a filing date of April 20, 2001. Schumacher was filed January 15, 2002. Thus, the Schumacher application itself is not available as prior art against this application.

The Office Action appears to rely on Schumacher's priority claim to provisional application Serial No. 60/262,134 filed January 15, 2001 to support the rejection. In order to support this rejection, there needs to be an evidentiary showing on the record that the provisional application fully supports the claims of the application as required by 35 USC 112 (See MPEP 706.02.V). There is no such showing on the record. Therefore, the rejections are improper as a matter of law and should be withdrawn.

### **CONCLUSION**

All pending claims are allowable over the cited references and this application is in condition for allowance. Applicants respectfully request reconsideration and prompt issuance of this application. Should any issue remain that prevents immediate issuance of the application, the Examiner is encouraged to contact the undersigned attorney to discuss the unresolved issue.

Respectfully Submitted,  
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